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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,226	08/21/2003	Steve Lin	DES/1250.0030	7137
152	.7590	05/17/2005	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204-3157			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/645,226	Applicant(s) LIN, STEVE	
	Examiner James N Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Amendment***

1. Examiner notes the Applicant's amendment to claim 1, which appears to contain some of the subject matter of canceled claim 7, departs from the original scope of claim 7 and thus comprises a new issue. For example, the Applicant has changed the sealing to occur between a recess and a circumferential container rim flange, from the originally-claimed circumferential flip-top flange sealing with the container rim. Accordingly, this Action can be properly made Final.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. US 3,991,904 in view of Ostrowsky US 4,487,324 and in view of Farris US 5,101,870.

Davis '904 teaches a container with a circumferential rim flange (unlabeled; shown in phantom in fig. 3 above sealing bead (36)), and a cap fixed to engage the container open end in a fluid-tight fashion, comprising a circumferential skirt (24), hinge (25), frangible strip (23) with pull-tab (29), inner circumferential flange (36) and flip-top (21). The cap is fixed to the container by the engagement between band (37) and container shoulder (3).

Davis '904 does not teach a threaded engagement between the cap and container.

Ostrowsky '324 teaches the mechanical equivalence of a snap connection comprising an internal bead (195) with a "shelf-like upper edge (196)," and between a threaded connection with a ratchet connection between the cap and neck.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connection between the bottle and closure cap of Davis '904, providing engaging

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threads and a ratchet teeth to the container neck and closure cap, as taught by Ostrowsky '324 to be a mechanical equivalent to a snap-connection.

Davis '904 further does not disclose the shape of the container.

Farris '870 teaches a disposable fluid container, and shows it is known to vary the shape of a container body, including forming such containers to a cylindrical shape as shown in fig. 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container shape of Davis '904, forming it to a cylindrical shape, because Farris '870 teaches varying the shape of the container is well-known, within ordinary skill, and lacks an unexpected result. Furthermore, it would have been obvious to form the container of Davis '904 to a cylindrical shape, or any other desirable shape, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. One having ordinary skill would be motivated to form the container at least in view of the teaching of varying container shape in Farris '870.

Regarding claim 8, Davis '904 teaches a radial tongue (30) with a deep end (31), and teaches in col. 3, lines 9-11, the end, "acts to guide the bung (30) back into the mouth of the container as the cap part is being moved into its closed position as shown in figs. 5 and 6." The deep end (31) is thus capable of guiding the container rim into alignment with the circumferential flange of the container.

Response to Arguments

4. Applicant's arguments with respect to claims 1-8 as rejected over Friendship '650 in view of Ostrowsky US 4,487,324 and in view of Farris US 5,101,870 have been considered but are moot in view of the new ground(s) of rejection.

5. Applicant's arguments filed 14 February 2005 have been fully considered but they are not persuasive.

Applicant argues Ostrowsky '324 teaches away from the equivalence of a snap-connection, with a ratchet tooth and threaded connection.

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Examiner notes that the differences taught are merely to quantify the differing structures of the embodiments. It is inherent that differing embodiments comprise differing structure. One having ordinary skill in the art will recognize that the two means for fastening a flip-top closure to a container are interchangeable, and are obvious variants of each other.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



NATHAN J. NEWHOUSE
PRIMARY EXAMINER